

AG Contract No.: KR05-0650TRN
ADOT ECS File No.: JPA 05-065
Project: Relocate Access to Development
Section SR 95 River Palms Storage Condos
TRACS No.: H685701C
Budget Source Item # 73306-K-Dist Minor

AGREEMENT

BETWEEN
THE STATE OF ARIZONA,
AND
THE 3 D PROPERTIES L.L.C. PARTNERS

THIS AGREEMENT is entered into July 27th, 2005, pursuant to Arizona Revised Statutes, Sections 28-408 ~~as amended~~, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State"), and the 3 D PROPERTIES L.L.C. PARTNERS, acting by and through their MANAGERS (the "Developer").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-408 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Developer is empowered to enter into this agreement and has by its Operating Agreement authorized the undersigned to execute this agreement on behalf of the Developer.

on SR 95 North of Boundary Cone Road,

3. Incident to the Developer's construction of the ~~River Palms Storage Condominiums~~, it is necessary to construct a left turn lane and relocate the entrance to said River Palms Storage Condominiums, for the safety of the traveling public along SR 95. The State agrees to share 50% of the cost of said turn lane and entrance relocation, up to a lump sum amount of \$109,966.00, herein referred to as the "Project". Total cost of the Project is \$219,932.00.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

(State) Initial	<u>DW</u>	Date	<u>09-19-05</u>
(Developer) Initial	<u>JVC</u>	Date	<u>9-11-05</u>

II. SCOPE OF WORK

1. The Developer shall:

a. Provide to State standards design plans, specifications and such other documents and services required for the Project. Incorporate State's review comments.

b. Request an encroachment permit from the State, through its Kingman District Office for temporary access in relation to the construction of the Project.

c. Be responsible for construction of the Project and any Project related construction contract modifications. Be responsible for any contractor claims for extra compensation for delays or whatever reason. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work necessitated by a change in the Project's scope of work.

d. Assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Developer and that the Developer hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event, arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the Developer, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys' fees.

e. Upon completion of the Project and final inspection, notify the Kingman District Engineer, that the Project has been constructed in accordance with the Project documents, requesting the State's acceptance the Project has been satisfactorily completed. Provide a recapitulation and an invoice up to a lump sum amount of \$109,966.00, for construction of the Project.

2. The State shall:

a. Review the Project design documents and provide comments.

b. Upon completion of the Project and approval of the Kingman District Engineer, accept the Project on behalf of the parties hereto. Within 30 days after receipt and approval of an invoice, pay the Developer a total lump sum amount of \$109,966.00, for the State's participation in construction of the Project.

III. MISCELLANEOUS PROVISIONS

1. This Agreement shall remain in force and effect until completion of said Project and reimbursements. This Agreement may be cancelled at any time prior to the construction of the Project and with 30 days written notice to the other party.

2. This Agreement shall become effective signing by both parties.

3. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this Agreement.

5. Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the state at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of the termination under this paragraph.

6. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

7. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12- 1518(B) and (C).

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007
FAX No. 602-712-7424

3 D PROPERTIES L.L.C. PARTNERS
Mr. Dwain Cheshire
P. O. Box 1794
Lake Havasu City, AZ 86405-1794

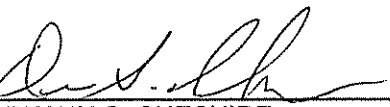
9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of their state to enter into this agreement and that the agreement is in proper form.

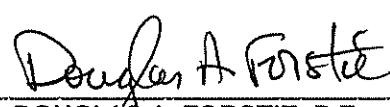
IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

3 D PROPERTIES L.L.C. PARTNERS

STATE OF ARIZONA

Department of Transportation

By 
DWAIN S. CHESHIRE
Manager

By 
DOUGLAS A. FORSTIE, P.E.
Deputy State Engineer